

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

LOUIS J. CLAY, #08452

VS.

CIVIL ACTION NO. 2:06cv56-KS-MTP

CHRISTOPHER EPPS, ET AL

ORDER ACCEPTING MAGISTRATE JUDGE'S
RECOMMENDATION AND DISMISSING PETITION WITH PREJUDICE
AS TO DEFENDANTS CHRISTOPHER EPPS, RONALD KING AND JOHNNY DENMARK
AND DENYING THE MOTION TO DISMISS AS TO GENEVA MCFARLAND

On this date the Court considered the Report and Recommendation of Magistrate Judge Michael Parker filed August 25, 2006, in regards to the civil rights complaint made by Plaintiff Louis J. Clay, #08452 ("Clay") pursuant to 42 U.S.C. § 1983.

PROCEDURAL HISTORY

Clay filed this lawsuit in state court and it was removed by Defendants. In his Complaint Clay alleges that he was subjected to unreasonable medical tests, as a result of which he contracted tuberculous and that the actions of the Defendants constituted deliberate indifference to his medical needs in violation of his Eighth Amendment rights. Defendants filed a Motion for Summary Judgment and in his Report and Recommendation the Magistrate Judge recommended granting of summary judgment in favor of Defendants Christopher Epps, Ronald King and Johnny Denmark and denying it for Defendant Geneva McFarland.

STANDARD OF REVIEW

When a party objects to a Report and Recommendation the Court is required to "make a *de novo* determination of those portions of the report or specified findings or recommendations to

which objection is made.” 28 U.S.C. § 636(b)(1). See also, *Longmire v. Guste*, 921 F. 2d 620, 623 (5th Cir. 1991)(party is “entitled to a *de novo* review by an Article III Judge as to those issues to which an objection is made.”) Such a review means that the Court will examine the entire record and will make an independent assessment of the law. The Court is not required, however, to reiterate the findings and conclusions of the Magistrate Judge, *Keotting v. Thompson*, 995 F. 2d 37, 40 (5th Cir. 1993) nor need it consider objections that are frivolous, conclusive or general in nature. *Battle v. United States Parole Commission*, 834 F. 2d 419, 421 (5th Cir. 1987). No factual objection is raised when a petitioner merely reurges arguments contained in the original petition. *Edmond v. Collins*, 8 F. 3d 290, 293 (5th Cir. 1993).

DEFENDANT'S OBJECTIONS

The Report and Recommendation has been objected to by Geneva McFarland, who was the case manager of Clay. McFarland objects to the fact that she was not dismissed as were the other three Movants.

ANALYSIS

McFarland’s objection to the Magistrate Judge’s Report and Recommendation do not specifically challenge the judge’s findings. In his findings Judge Parker stated that the Petitioner Clay did not sufficiently state a cause of action against McFarland. However, he gave Clay twenty (20) additional days to amend his order to state his best claim against McFarland. This Court finds that the recommendation is reasonable in light of all of the circumstances and this Court finds that the Report and Recommendation should be adopted.

CONCLUSION

As required by 28 U.S.C. § 636(b)(1), the Court has conducted an independent review of

the entire record and a *de novo* review of the matter raised by the objection. For the reasons set forth above, this Court concludes that Geneva McFarland's objection lacks merit and at this time should be **overruled**. The Court further concludes that the Report and Recommendations are an accurate statement of the facts and a correct analysis of the law in all regards. Therefore, this Court accepts, approves and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendations.

Accordingly, it is ordered that the United States Magistrate Judge Michael T. Parker's Report and Recommendation is accepted pursuant to 28 U.S.C. § 636(b)(1) and that Louis J. Clay's claims against Christopher Epps, Ronald King and Johnny Denmark are **dismissed** with prejudice. The claim against Geneva McFarland is not dismissed at this time.

SO ORDERED this the 18th day of September, 2006.

s/ *Keith Starrett*
UNITED STATES DISTRICT JUDGE